

CHAPTER XVI.

PROVINCIAL TAXATION.

"Taxing is an easy business. Any projector can contrive new impositions, any bungler can add to the old. But is it altogether wise to have no other bounds to your impositions than the patience of those who are to bear them?"
—BURKE.

Direct taxation, though common enough in an irregular sort of way under former governments, was only systematically adopted by ours on the first introduction of the Income Tax in 1860.

ORDERS AS TO INCOME TAX.

1. **Assessment.**—"The evils believed to arise from the Income Tax are due almost entirely to the employment of the underlings of the Tehsildars on the very important and delicate duty of assessing and collecting the tax.

"The Governor-General in Council greatly regrets the employment of such agency on such a duty. The favourable reports of 1861 prove positively that no such obvious maladministration was then allowed; and it is known that the tax was at that time assessed by the Collectors themselves, by their Assistants and Deputies, and by the Tehsildars.

"The Governor-General in Council cannot admit that the intervention of the lowest class of revenue officers is essential to the proper collection of the tax, or that the employment of such officers in such work is necessary.

"Under the present Act the number of persons affected by the tax will be so largely reduced, owing to the limit of assessment having been raised, that the employment of the agency of the underlings of the Tehsildars would be more than ever inexcusable. The Governor-General in Council is accordingly pleased to prohibit throughout India the assessment to income tax by any officers below the rank of Tehsildars and Mamlatdars. Even these officers should be only employed in strict subordination to the Collector and his Covenanted and Uncovenanted Assistants, who should take personally a large share of the work, and should most carefully supervise the assessments which they cannot make themselves.

"Agricultural incomes are everywhere, save in the permanently-settled districts, assessed *prima facie* by a fixed rule with reference to the revenue paid by each person; no inquiries therefore are ordinarily required in respect to such incomes. A large proportion of the other persons liable to the tax must be massed in the large towns, their systematic assessment being thereby much facilitated. Upon the whole the Government of India cannot doubt that the tax can usually be assessed by the agency of the district officers and their covenanted and uncovenanted subordinates, including the Tehsildars or Mamlatdars, and that if this agency only be used, the greater part of the evils described will at once be obviated."—*G. of I.*, Oct. 1871.

2. **Enquiries.**—There are certain cardinal objects which should be constantly borne in view, namely, to prevent inquisitorial and vexatious proceedings, to stop the ministerial officers from making personal inquiries, from intriguing, and from interfering in private concerns, to check corruption, to ensure secrecy as to the particulars returned by individuals, and to make the people feel that so long as a man only fills in the return sent to him, and pays what is fairly due, he has no inquisition, no exposure, no harassment of any kind to fear. It cannot be too strongly impressed on every officer employed that the object is to raise a fair amount in a manner that shall not be oppressive or vexatious to the people.—*G. of I. with G. R. No. 2940, Aug. 23, 1860.*

3. **Returns.**—It would assuredly be vain to expect to obtain perfectly true returns of property liable to the income tax, and so long as the return of income rendered by any person shows a fair approximation to his reputed means, and agrees tolerably with the estimation in which he is known to be held by Native society, such return should be received.—*G. of I. No. 1667, Aug. 10, 1860.*

4. **Supervision.**—Revenue Commissioners are to take steps for affording, as far as possible, redress in all cases in which there is reason to believe undue collections have been made. They are not debarred from generally supervising the working of the tax, and bringing to notice any abuses they may discover, because they do not hold any defined legal position under the Act.

All officers entrusted with the administration of the income tax are seriously warned against passively tolerating over-exaction. Abuses no doubt are almost inseparable from the imposition of the

income tax, especially in remote districts and among a rural population. It is therefore all the more incumbent on Collectors, their Assistants and Deputies, instead of acquiescing in the existence of this evil, to do their utmost to reduce it to a minimum. The most painstaking officer may be misled in issuing the first notice, but there is no excuse for not making a patient inquiry when either a petition of objection or an appeal is preferred. Appellants under the income tax are entitled to the utmost consideration, and where no accounts or direct evidence are forthcoming, a few personal inquiries as to the real status and position of the party may be made with advantage.—*G. R. No. 1960, Nov. 17, 1871.*

5. **Payment of Officials.**—The plan of paying Government officers by a commission on the amount of revenue collected is disapproved.—*G. of I. No. 1503, March 5, 1870.*

6. **Non-Regulation villages.**—The fact of villages being under the laws and regulations would be a bar to the levy of taxes unauthorized by law; but there is no reason whatever why taxes authorized by law should not be levied in non-regulation districts and villages.—*G. R. No. 2505, Sept. 8, 1871.*

LICENSE TAX, 1878.

7. **Principles.**—The principle of the Act is that all persons are *prima facie* liable to the tax except persons who live solely from—Professions; Service, public or private; Cultivation; Incomes derived from real property or investments; Labour; and, Persons with no occupation.—*G. R. No. 1941, May 31, 1878.*

8. The trading classes have hitherto escaped all taxation. It is the intention of Government that the License Tax shall be so adjusted that the richer members of the community should pay the greater part of it, leaving the small traders, earning less than Rs. 100, untaxed.—*G. R. No. 509, Feb. 13, 1878.*

This minimum limit of Rs. 100 has been raised to Rs. 500 under the License-tax Act, 1880.

9. **Preparation of Lists.**—[With regard to the preparations of lists of persons assessed to the tax, abstracts of which are to be submitted to Government through the special officer before being published, it was directed that statements according to Form E. accompanying G. R. No. 2546, Sept. 11, 1871, should be prepared.

In consequence of the amount of labour necessary to the preparation of this, the following order was afterwards passed :]

(2) The general census returns of 1872, although six years old, are sufficiently accurate as regards the population generally for the purpose Government have in view.

(3) But it is essential that a trustworthy list shall be framed of persons actually carrying on different occupations, in order that the Collectors and Government may be able to see, *first*, that the persons returned as engaged in assessable occupations bear a reasonable proportion to those engaged in non-assessable occupations ; *secondly*, that of the former a reasonable proportion is brought upon the assessment list.

(4) The basis of this should be Village Form 13, which already contains the name of each householder and the members of the household. All that is further required is the occupation of the householder, and the name and occupation of each adult member of the household actually carrying on one of the occupations given in the occupation columns of form E, and for this no new census, merely some additional enquiry, is needed.

(5) From Village Form 13, with these additions, Form E, should be prepared. It must be distinctly understood that the adults exercising the different occupations should alone be entered in the occupation columns of Form E, and that the women, children, aged and infirm persons of the families of these adults should be entered in Column 167 'unemployed.' The grand total will of course correspond with the total population as by Form 13.

(6) It will not be necessary to fill in the first two columns under each heading (viz., 'alone' and 'with other occupation') ; the entries should be made in the column of 'total' only. An individual having two occupations should be entered in the column relating to his principal trade, except when his principal occupation is one, such as cultivation, which is exempt from the tax, when great care should be taken that he is brought into the column of the taxable occupation.

(7) The occupations liable to the tax are those in columns 22—71, 79—126, 130—132, 136—163, and 165, and speaking generally, these columns will be a sufficient guide to assessing-officers in deciding whether a particular occupation is or is not assessable. There may, however, sometimes be a doubt under which

column of Form E an occupation liable to the tax should be entered, and Collectors should be careful to instruct the Mamlutdars in all such cases. Thus 'ship and boat owners' should be entered under column 132; 'letters out of animals and vehicles' under column 138, &c. On the other hand, it does not necessarily follow that a person entered in the column of an assessable occupation must be assessed; he may be exemptable either as having less than Rs. 100 a year from that occupation, or otherwise, under orders already issued. Thus a dhobie in private service, a smith regularly employed in a factory, a sailor merely working for wages and having no interest in his vessel, are exempt under *G. R. No. 999 of 30th March*.

(8) But it will be distinctly understood that every person entered in one of the columns of Form E given in the beginning of the last paragraph is *prima-facie* liable to the tax, and can be exempted only on the assessing officer satisfying himself on summary enquiry that he is exemptable for one of the reasons stated at the end of the last paragraph.

(9) It is the duty of the assessing officer, first, to ascertain that Form E is framed correctly, *i.e.*, that all adults are correctly entered according to their occupation; secondly, to decide by summary enquiry what persons entered under taxable occupations are exemptable; thirdly, the remaining persons being all taxable, to decide in which class under the Act each shall be placed. Thus the whole population will come under review, and the assessing officer will not have to search for the persons liable to taxation; he will only have to eliminate those who are exemptable. To bear this in mind is essential to the successful working of the Act.

(10) When, as in large towns, village Form 13 is not prepared, Form E, as explained above, must be prepared by such enquiry as may be necessary, minute and inquisitorial questions being avoided. It is believed that almost everywhere for Municipal or other purposes lists of houses and householders exist which should in such cases be the basis of Form E.

(11) It is only necessary to submit to Government talookwar abstracts of the lists prepared according to Form E, the number of persons assessed in each class, and the amount of their assessment being shown in each occupation column of Form E, below the figures of the number of persons included in that column—*G. R. No. 1915, May 29, 1878*.

10. Government would impress upon Collectors the necessity for uniformity in the assessment of the various portions of the district, and desire that they will use their utmost personal exertions to see, not only that uniformity is maintained, but also that the total proceeds obtained from the license tax are such as Government have good ground to expect should be realized.—*G. R. No. 1879, May 28, 1878.*

11. Government does not place implicit reliance on Panchayats as assistants to the Collector in making the assessments, but will not object to the employment of this agency to fix the class in which each trader shall be assessed, if the Collector deem it necessary. But he should be careful not to subordinate his own judgment to that of the Panchayat, and should remember that the employment of Panchayats to assess the income tax sometimes resulted in the richer classes being relieved of their fair share of the burden of the tax. Government trusts that similar abuses in assessing the license tax will be avoided.

Wherever Panchayats are employed the Collector should form his own opinion of the amount each town and village should pay on a consideration of its population and trade, and only leave to the Panchayat the task of distributing the burden, taking care even in that case that the more wealthy classes do not escape their fair share of it.—*G. R. No. 509, Feb. 13, 1878.*

Each Collector as soon after the 1st of each month as possible should submit a report showing the amount of the sanctioned assessments and the amount of license tax realised up to date.—*G. R. No. 3275, Sept. 13, 1878.*

Government consider it expedient that the annual assessment statements should be submitted to them for approval.—*G. R. No. 2484, July 9, 1881.*

12. **Enquiries.**—The Act for the levy of the license tax empowers Collectors to call for such information as they may deem necessary for the proper assessment of the tax.

(2) The question has more than once been considered as to whether any form ought to be prescribed in which the requisite information should be required and furnished. But Government has heretofore refrained from prescribing any such form, preferring to leave the matter to discretion.

(3) Government however relies on Collectors rendering these necessary enquiries as simple, as little vexatious, as little inqui-

sitorial as possible. Minute enquiries should be avoided in the first instance; each person apparently or presumably liable to the tax should be placed in such class as his general circumstances, ascertained by summary enquiry and without detailed investigation, may seem to justify. Any person who may be dissatisfied with the class in which he is placed may appeal, and then complete enquiry may be made. Otherwise such enquiry will not ordinarily be needed.—*G. R. No. 1916, May 29, 1878.*

13. **Undivided families.**—When members of undivided families carry on distinct occupations, or have separate accounts, they should be assessed individually.—*G. R. No. 2104, June 13, 1878.*

14. Where a trading undivided family, consisting of several members, all personally engaged in the trade, makes a total income, 2 per cent. on which amounts to more than the maximum fee under the Act (Rs. 200), the partial exemption which would be caused by taxing the family income as a whole is unnecessary, and the individuals should be taxed separately. But where a joint family by carrying on one trade makes an aggregate income that is assessable though it would not be if divided among the individuals, the junior members of the family, carrying on the industry under its head, are really his assistants or servants; and he alone should be assessed on a consideration of the total income derived from the industry.—*G. R. No. 1701, May 15, 1878.*

15. **Rent.**—The receipt of rent of land, houses, &c., is not a 'trade, dealing, or industry,' and income derived from rent is therefore not assessable.—*G. R. No. 1925, May 30, 1878; No. 1829, May 28, 1880; and No. 2412, July 8, 1880.*

16. But what a Sowkár receives on account of land mortgaged to him or on which he has otherwise a lien, the land not being entered in his own name, is a trade profit, and he is assessable on it.

As regards land entered in the name of the Sowkár, of which he is the nominal owner, and which he is supposed to let for what rent it will fetch, the case is different, and *G. R. No. 1925* of May 30, strictly speaking, applies. But in reality all the transactions of a Sowkár engaged in his business are founded on, and connected with, his trade, and it would be very difficult for the assessing officer to separate his different kinds of profits. When, therefore, a Sowkár is actively carrying on the business of banking, he should be

assessed on an estimate of his entire profits, and left to show, on appeal, that any portion of them is not properly assessable.—*G. R. No. 2267, June 27, 1878.*

17. **Occupations assessable.**—A Telegraph official is not assessable; a manufacturer of leather is assessable; a barber, if a private servant receiving wages, is not assessable; if exercising his occupation publicly, is assessable. A prostitute is not assessable.—*G. R. No. 1941, May 31, 1878, and No. 2406, July 8, 1878.*

18. Mechanical engineers and artisans in the employ of Government or of Railway Companies, or of public bodies, are considered to be servants receiving fixed wages, and are not subject to taxation under the License Tax Act.—*G. R. No. 999, March 30, 1878.*

19. Fishermen and bhandáris are taxable under the License Act, but owners of toddy trees who lease such trees to bhandáris are as cultivators exempt from liability to payment of the tax.—*G. R. No. 1874, May 27, 1878.*

20. A person residing in foreign territory and carrying on business in British territory is liable to the tax though he has no shop or residence in British territory. A trader residing in British territory and trading in foreign as well as British territory is assessable on his whole profits.—*G. R. No. 1914, May 29, 1878.*

Merchants in Europe who send goods to Bombay to be sold on commission by their agents or correspondents there, are not liable to the License Tax. The persons, who are liable to the License Tax, are the agents or correspondents in Bombay.

The intention of the Act is not to make the partners in a firm individually liable to the tax at all. A person, if otherwise liable, who is resident and carries on trade or dealings for only a portion of the year, is bound to take out a license and to pay the full fee for the same, which can only be remitted, in whole, or in part, by the Collector, subject to the general orders of Government (*see* Section 14 of the Act).

“2. As regards ‘native trading families’ if they are really partners and carry on trade, like other mercantile associations, under a recognized name, as a firm, the same rule applies to them, *i. e.*, to so many of them as are partners, as to any other firm. But in the case of members of the same family who merely live and work together, but have no pretensions to be recognized as a firm,

they must take out separate licenses: * * *—*G. R. Nos. 3168 and 3169, Sep. 5, 1878.*

“The same reasons for considering that foreign merchants who send their goods to Bombay to be sold there by Commission Agents are not liable to the license tax, seem to apply to Foreign Insurance Companies also. These Companies do not themselves carry on any dealings in Bombay. Their Commission Agents in Bombay obtain constituents for them, but the Companies themselves carry on no dealings and have no place of business in Bombay.—*G. R. No. 3259, Sep. 12, 1878.*

All persons paying “veros” should be assessed to the license tax, but in recovering the assessment, those who pay the “veros” to Government (Imperial Revenue), should be allowed a deduction equal to the amount of those “veros.”—*G. R. No. 3050, Aug. 27, 1878.*

Liquor Contractors are liable to the tax.—*G. R. No. 482, Feb. 10, 1879.*

The profession of a Solicitor, Vakil, or Pleader is not a trade, dealing or industry within the meaning of the Bombay License Act, 1878, even as that Act has been amended by Act VI. of 1880.”—*G. R. No. 2105, June 13, 1878; and 2271, June 29, 1880.*

Stamp Vendors are assessable.—*G. R. No. 3549, Oct. 15, 1879.*

A Post Master is not liable to the payment of a tax under Bombay Act III. of 1878, merely because he derives a profit from the sale of postage stamps.—*G. R. No. 4226, Dec. 1, 1879.*

A person charged with Pándhary tax in the Central Provinces should not be charged with license fees elsewhere; a person charged with a license fee elsewhere should not be charged with Pándhary tax in the Central Provinces.”—*G. of I. No. 688; May 22, 1880.*

When any person is engaged in any trades, dealings, industries or callings in more than one of the local areas to which—

The Northern India License Act, 1878;

The Madras License Act, 1878,

The Bombay License Act, 1878, and

The Bengal License Act, 1880,

respectively extend, and is thereby liable to pay fees under more than one of such Acts, he shall be chargeable with a fee only under the Act under which he is liable to pay fees in respect of his principal place of business, and the amount of such fee shall be

calculated as if he were engaged in all such trades, dealings, industries and callings within the local area to which such Act applies.

“When any question arises as to what shall, for the purpose of this direction, be deemed to be the principal place of any business, the Governor-General in Council will decide such question.”—*G. of I. No. 686, May 22, 1880.*

21. **Appeals.**—Petitions of appeal under Act I. of 1878 are chargeable with a fee of one anna or eight annas, according as they fall within Clause (a) or Clause (b) of Article I. Schedule II. of the Court Fees Act.—*G. R. No. 1732, May 17, 1878.*

22. Under the words of Section 12, ‘The Collector should hear the petition and pass such orders thereon as he thinks fit,’ the Collector has the power of enhancing, as well as of confirming or reducing the assessment.—*G. R. No. 2087, June 11, 1878.*

23. **Arrears.**—The Commissioners of Divisions and the Commissioner in Sind are vested with discretionary power to write off irrecoverable balances of license tax up to any amount.—*G. R. No. 1487, April 28, 1881.*